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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,956	01/25/2002	Eric McKinlay	50642.00027	8430
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OKAMOTO & BENEDICTO, LLP			BLENMAN, AVALON	
P.O. BOX 641330			ART UNIT	
SAN JOSE, CA 95164			PAPER NUMBER	

2153

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,956

Applicant(s)

MCKINLAY ET AL.

Examiner

Avalon Blenman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This office action is a first action on the merits of this application and is made **NON-FINAL**. Claims 1-39 are currently pending, of which 1, 12, 23, 34, 35, & 39 are independent claims.

Response to Amendment

2. Examiner acknowledges preliminary amendment submitted for the specification and the addition of claims 35-39.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted has been entered and is being considered by the examiner.

Specification

4. The disclosure is objected to because of the following informalities:

- Page 3 is blank. Appropriate correction is required.
- The phrase "another page of the web site may be displayed on the if the client computer..." is unclear (pg. 5). Should the phrase read: another page of the web site may be displayed on the *client computer* if the client computer..."? Appropriate correction is required.

5. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

6. Claims 8, 19, & 30 are objected to because of the following informalities: The phrase "another page of the web site may be displayed on the if the client computer..." is unclear (pg. 5). Should the phrase read: another page of the web site may be displayed on the *client computer* if the client computer..."? Appropriate correction is required.

7. Claims 1, 12, & 23, are objected to because of the following informalities: "...a plug-in application is included the page of the web site" is unclear (line 3). Should the phrase read: ...a plug-in application is included *on* the page of the web site? Appropriate correction is required.

8. Claim 43 is objected to because of the following informalities: "...a plug-in application is included the first page of the web site" is unclear (line 3). Should the phrase read: ...a plug-in application is included *on* the first page of the web site? Appropriate correction is required

Claim Rejections - 35 USC § 101

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. Claim **23** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

11. Computer programs are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. Appropriate correction is required. This claim will be treated as best understood by examiner.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-6, 12-17, & 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kelley et al. (US 6,651,084)**, hereinafter Keller, further in view of **Fisher et al. (US 2003/0126094)**, hereinafter, Fisher, further in view of **Semenzato (US 5,903,728)**, hereinafter Semenzato, further in view of **Bodin (US 6,061,733)**, hereinafter Bodin.

14. In considering independent claims 1, 12, & 23, Kelley discloses a method for initiating a software download, comprising:

- a) accessing via a network a page of a web site utilizing a browser application running on a client computer, wherein a plug-in application is included the page of the web site [col. 3, lines 58-64, col. 5, lines 27-31];
- c) downloading the plug-in application from the web site to the client computer via the network [col. 5, line 27-31].

While Kelley discloses downloading a plug-in application, Kelley does not explicitly disclose determining whether the client is suitable for receiving the plug-in application. Nonetheless, in related art of downloading plug-ins, Fisher discloses:

- b) determining whether the client computer is suitable ("authenticated") for receiving the plug-in application [¶0044, ¶0157];

Kelley neither explicitly discloses a download manager. Nonetheless, in analogous art of downloading plug-ins, Semenzato discloses

- c) the plug-in application has instructions for downloading a download manager application ("plug-in controller") to the client computer [col. 4, line 56 – col. 5, line 9], and
- d) downloading the download manager application to the client computer via the network utilizing the plug-in application [col. 4, line 56 – col. 5, line 9].

While Semenzato discloses a download manager, Semenzato does not explicitly disclose a download manager with instructions for downloading a software application in chunks. Nonetheless, in related art of downloading software, Bodin discloses:

- d) the download manager application (fig. 3) has instructions for downloading a software application in chunks to the client computer via the network [col. 4, lines 37-48]; and
- e) downloading the software application in chunks to the client computer via the network [col. 4, lines 37-48].

Given the teachings of Fisher, Semenzato, and Bodin, at the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the method of Kelley to include additional steps of determining whether the client computer is suitable for receiving the plug-in, downloading a manager application, and downloading the software application in chunks. The motivation for doing so would be to authenticate the user (Fisher, ¶0157), control execution of the plug-in via a download manager,

(Semenzato, col. 4, line 56 – col. 5, line 9), and to combat loss of connections of time-outs by downloading the files in chunks (Bodin, col. 2, lines 56-64).

15. In considering claims **2, 13, & 24**, Fisher discloses:

- the plug-in application comprises at least one of an ActiveX control and a JavaScript application [¶0156].

16. In considering claims **3, 14, & 25**, Kelley discloses:

- a security feature of the browser application of the client computer requires that a user authorize the downloading of the plug-in application [col. 4, lines 67 –col. 5, line 7].

17. In considering claims **4, 15, & 26**, Kelley discloses:

- the security feature includes displaying a message (“prompt”) to the user that notifies the user to authorize the downloading of the plug-in application [col. 4, lines 67 –col. 5, line 7].

18. In considering claims **5, 16, & 27**, Kelley discloses:

- another page of the web site is displayed to the user if the authorization to download the plug-in application is denied by the user [*“if the user does not want to add a registered plug-in, the user is prompted to update general plug-ins list”*, fig. 6, step 101:NO, col. 6, line 59 – col. 7, line 5].

19. In considering claims **6, 17, & 28**, Fisher discloses:

- information about whether or not the downloading of the plug-in application was authorized by the user is stored in the client computer [fig. 19, "record transaction (...authorization)].

20. Claims **7, 18, & 29** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kelly, Fisher, Semenzato, & Bodin** as applied to claim 1 above, and further in view of **Ehring et al (US 2005/0097008)**, hereinafter, Ehring.

21. In considering claims **7, 18, & 29**, while Fisher discloses determining the suitability of the client computer for receiving the plug-in, Fisher does not explicitly disclose determining the number of times the client computer has accessed the web site. Nonetheless, in related art of providing plug-ins, Ehring discloses:

- determining the suitability of the client computer for receiving the plug-in application includes determining whether the number of times the client computer has accessed the web site is under a predetermined threshold number ("application rule") [¶0163].

Given the teachings of Ehring, at the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the method to include the step of determining the number of times the client computer has accessed a web site is. The

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motivation as suggested by Ehring, would be so that the user's computing environment could be a factor in determining if the said plug-in should be provided [¶0163].

22. In considering claims **8, 19, & 30**, while Fisher discloses determining if a client computer is unsuitable for receiving the plug-in application, Fisher does not explicitly disclose displaying another page of the web site if the client computer is determined to be unsuitable for receiving a plug-in application. Nonetheless, Examiner takes official notice that displaying another page of the web site (i.e. an error message, such as an "access denied" message, or pop-up box) in such a case is notoriously well known in the art. A person having ordinary skill in the art would have readily recognized the desirability and advantages of determining if a client computer is unsuitable for receiving a plug-in application taught by Fisher, and in addition displaying another page of the web site to notify the user of such. Thus, at the time of the invention, this would have been an obvious modification to the system disclosed by Fisher.

23. Claims **9, 20, & 31** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kelly**, further in view of **Fisher**, further in view of **Bodin**, and further in view of **Goodwin et al (US 2002/0023057)**, hereinafter, Goodwin.

24. In considering claims **9, 20, & 31**, while Kelley discloses downloading a plug-in application, Kelley does not explicitly disclose displaying a license agreement prior to he

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downloading the plug-in application. Nonetheless, in analogous art of downloading plug-ins, Goodwin discloses:

- a license agreement is displayed on the client computer to the user prior to the downloading of the plug-in application [fig. 3, steps 302 & 312, ¶0097].

Given the teachings of Goodwin, at the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the method of Kelley to display a license agreement prior to downloading the plug-in application. The motivation as suggested by Goodwin would be to require the user to agree to the software license agreement prior to the plug-in being installed [¶0097].

25. In considering claims **10, 21, & 32**, Fisher discloses:

- the determination of the suitability of the client computer for receiving the plug-in application is carried out by another web site ("PDPS web site") [¶0044, ¶0157].

26. In considering claims **11, 22, & 33**, Fisher discloses:

- the page of the web site launches a window ("approval message") which initiates the determination of the suitability of the client computer for receiving the plug-in application [¶0216].

27. Claim **34** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Kelly**, further in view of **Fisher**, further in view of **Bodin**,, and further in view of **Davis et al (US 6,138,155)**, hereinafter Davis.

28. In considering independent claim **34**, Kelley discloses a method for initiating software download, comprising:

a) accessing via a network a first page of a web site utilizing a browser application running on a client computer, wherein a plug-in application is included the first page of the web site [col. 3, lines 58-64, col. 5, lines 27-31].

Kelly does not explicitly disclose a plug-in application comprising Active X control, nonetheless, as set forth above in reference to claim 2, this feature is taught in analogous art by Fisher [¶0156].

As disclosed above in reference to claim 1 & 7, Fisher discloses:

b) determining whether the client computer is suitable for receiving the plug-in application [¶0025, ¶0044, & ¶0157].

As set forth above in reference to claim 7, Ehrling discloses:

- determining the suitability of the client computer for receiving the plug-in application includes determining whether the number of times the client computer has accessed the web site is under a predetermined threshold number ("application rule") [¶0163].,

As set forth above in reference to claim 8, Examiner takes official notice that a second page of the web site is displayed on the if the client computer is determined to be unsuitable for receiving the plug-in application

As set forth above in reference to claim 1, Kelley in view of Fisher teach:

c) downloading the plug-in application from the web site to the client computer via the network if the client computer is determined to be suitable ("authenticated") for receiving the plug-in application [Fisher, ¶157], wherein a security feature of the browser application of the client computer requires that a user of the client computer authorize the downloading of the plug-in application, [Kelly, col. 4, lines 67 – col. 5, line 7]].

However, Kelley does not explicitly disclose a download manager. Nonetheless, in analogous art of downloading software form web sites, Davis discloses:

- the application has instructions for downloading a download manager application to the client computer from a second web site (Server B) via the network [col. 11, lines 41-64].
- d) downloading the download manager application ("executable program") to the client computer via the network utilizing the software application, wherein the download manager application has instructions for downloading a software application () to the client computer via the network from a web site

(Server B) other than the web site having the plug-in application [fig. 4, step S403, col. 4, line 56 – col. 5, line 9].

However, Davis does not explicitly disclose downloading the software application in chunks. Nonetheless, as set forth above in reference to claim 1, Bodin discloses:

e) downloading the software application in chunks to the client computer via the network utilizing the download manager application [col. 4, lines 37-48].

Given the teachings of Fisher, Davis, and Bodin, at the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the method of Kelley to include the additional steps of determining whether the client computer is suitable for receiving the plug-in, downloading a manager application, and downloading the software application in chunks. The motivation for doing so would be to authenticate the user (Fisher, ¶0157), control execution of the plug-in via a download manager, (Semenzato, col. 4, line 56 – col. 5, line 9), and to combat loss of connections of time-outs by downloading the files in chunks (Bodin, col. 2, lines 56-64).

29. Claims **35, 36, 39, & 40** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kelley**, further in view of **Bodin**.

In considering independent claim **35**, Kelley discloses a method for initiating a software download, the method comprising:

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- providing a web page to a client computer over a network [col. 5, lines 27-31];
- offering to provide a software application ("plug-in") to a user of the client computer [col. 4, line 67 – col. 5, line 2], and
- only if the user specifically agrees to receive the software application by so responding to a security prompt, downloading the software application to the client computer [col. 5, lines 3-7].

While Kelley discloses downloading a software applicant upon responding to a security prompt, Kelley does not explicitly disclose that the software application is download in chunks. Nonetheless, as set forth above in reference to claim 1, this feature is taught by Bodin [col. 4, lines 37-48].

30. In considering claim **36**, Kelley discloses:

- the network includes an Internet [col. 3, lines 15-17].

31. In considering claim **39**, Kelley discloses a method for initiating a software download, the method comprising:

- requesting to receive a web page over a computer network [col. 5, lines 27-31],
- receiving an offer to receive a software application [col. 4, line 67 – col. 5, line 2], and
- receiving the software application only if a user of a client computer that received the web page specifically agrees to receive the software

application [col. 5, lines 3-7].

While Kelley discloses downloading a software application upon agreement of a user of a client computer, Kelley does not explicitly disclose that the software application is downloaded in chunks. Nonetheless, as set forth above in reference to claim 1 above, this feature is taught by Bodin [col. 4, lines 37-48].

32. In considering claim **40**, Kelly discloses:

- the user specifically agrees to receive the software application by so responding to a security prompt [col. 5, lines 3-7].

33. Claims **37 & 41** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kelly & Bodin** as applied to claims 34 & 39 above, and further in view of **Fisher**.

34. In considering claim **37**, while Kelley discloses a security prompt, Kelley does not explicitly disclose a VeriSignTM prompt. Nonetheless, in analogous art, of downloading plug-ins, Fisher discloses:

- the security prompt comprises a VeriSignTM prompt [¶0156].

Given the teachings of Fisher, at the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the method of Kelley to include a

VeriSign™ prompt. The motivation as suggested by Fisher would be so that the user of the client computer could verify the digitally signed certificate via its originator [¶0156].

35. In considering claim **41**, Fisher discloses:

- the user specifically agrees to receive the software application by so responding to a VeriSign™ prompt [¶0156].

36. Claim **38** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Kelly & Bodin** as applied to claim 34 above, and further in view of **Semenzato**.

37. In considering claim **38**, while Kelley discloses downloading a software application to a client computer, Kelley does not explicitly disclose a download manager. Nonetheless, in analogous art of downloading software applications, Semenzato discloses:

- providing a download manager (“plug-in controller”) to the client computer [col. 4, line, 56 – col. 5, line2]; and
- using the download manager to download the software application (“plug-in body”)to the client computer [col. 4, line, 56 – col. 5, line2].

Given the teachings of Semenzato, at the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the method of Kelley to include the step pf providing a download manager. The motivation as set forth above in reference

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to claim 1 would be to control execution of the plug [Semenzato, col. 4, line 56 – col. 5, line 9].


Conclusion

38. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Avalon Blenman whose telephone number is (571) 272-5864. The examiner can normally be reached on Mon-Fri, 7:00 AM - 4:30 PM (even date Mons. off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on (571) 272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Avalon Blenman
09/13/2005



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